

REMARKS

The Amended Claims

Claim 1 has been amended to specify that the cancerous cells are located on the “**oral**” epithelium (as distinct from intraperitoneal tissue) and that the mitochondrial marking agent is delivered by “**contacting**” the cancerous cells with the agent versus limited “topical” application. The claim previously already included the step of “detecting” whether cells of the suspect tissue have been marked by absorption of the agent by the mitochondria of cancerous cells.

Claim 2 has also been amended to specify selective killing of cancerous “**oral**” epithelial cells “in the locus of normal cells on the oral epithelium” and, similarly, the limitation of “topical” application has been replaced by “**contacting.**”

Support for the amendment relating to “oral” epithelial tissue is clear in Examples 4 and 5. “Contacting” cells with the mitochondrial marking agent is amply supported in the examples, e.g. by “incubation,” etc.

Without prejudice to asserting the subject matter of these claims in appropriate continuing and/or divisional applications, Claims 3-10, have been cancelled to expedite prosecution of this application.

The Rejections

Claims 1 and 2 were rejected as “anticipated” (35 USC 102) by *Bernal* and also as unpatentable for obviousness within the meaning of 35 USC 103.

Objection was stated as to these claims as previously amended to recited “topical” application of the mitochondrial marking agent.

ARGUMENT

Bernal discloses anticarcinoma activity of rhodamine as measured by the increase in survival time of mice after intraperitoneal injection of certain tumor cells. As previously noted, this increase in survival time could just as well be ascribed to decreasing the spread of cancer cells as to actually killing these cancer cells. Moreover *Bernal* does not disclose that rhodamine had selective anticarcinoma activity (either in selectively inhibiting growth or selectively killing the cancer cells) in the presence of normal cells. In any event, *Bernal* simply fails to disclose contacting “oral epithelial” cells (as now claimed) with the mitochondrial marking and/or killing agent. For at least these reasons, *Bernal* cannot anticipate either amended Claim 1 or amended Claim 2.

Further, the Examiner has noted the arguments previously presented (“obvious to try,” “no reasonable expectation of success,” and “invitation to experiment”), which are effective to

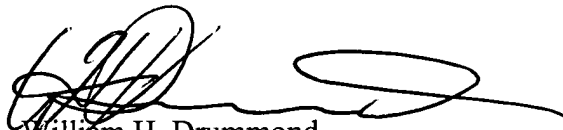
rebut a prima facie case of obviousness under Section 103. Without repeating these arguments, they are clearly applicable to the Section 103 rejection of both Claims 1 and 2 as presently amended.

Finally, the amended claims now specify that the cells are “contacted” with the mitochondrial marking agent, rather than that the agent is “topically” applied. It is believed that the Section 112 objection to “topical” or “topically applied” is thus rendered moot.

REQUEST FOR RECONSIDERATION

For the foregoing reasons, the Examiner is respectfully requested to reconsider this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. H. Drummond', with a long horizontal flourish extending to the right.

William H. Drummond
Registration No. 39,516
Attorney for Applicants
Telephone: (949) 724-1255